



Appendix D, Sample Supplemental Agreement, DIR-SDD-539 DELL MANAGED SERVICES AGREEMENT

This Managed Services Agreement (“**Agreement**”) is made between Dell Marketing L.P. with offices located at One Dell Way, Round Rock, Texas 78682 (“**Dell**”) and _____ with offices located at _____ (“**Customer**”), as of _____ (the “**Effective Date**”) pursuant to DIR Master Agreement DIR-SDD-539. In order to procure Seat Management Services from Dell using the State of Texas Department of Information Resources (“**DIR**”) Agreement DIR-SDD-539 (“**DIR Contract**”), Customer agrees to the following:

ARTICLE 1 GLOSSARY, SCHEDULES AND STATEMENTS OF WORK

1.1 Defined Terms

Wherever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, capitalized words and phrases shall have the respective meanings ascribed to them in Schedule 1 (Glossary).

1.2 Schedules

The following schedules are annexed hereto and form part of this Agreement (“**Schedules**”):

Schedule 1	-	Glossary
Schedule 2	-	Statement of Work (Service Descriptions and Service Levels)
Schedule 3	-	Fee Schedule/Early Termination Fees
Schedule 4	-	Change Management
Schedule 5	-	DIR Contract

1.3 Order of Precedence

In the event of a conflict or inconsistency, the following is the order of precedence of documents comprising this Agreement: (1) the Statement of Work; (2) the Schedules annexed to this Agreement; (3) the Agreement; and (4) DIR Contract.

1.4 Parties

DIR shall not be a party to this Agreement or any Statement of Work executed between Dell and Customer, except to offer such Services through the DIR Contract. Compliance with this Agreement and a Statement of Work is the responsibility of the Customer. DIR shall not be responsible for any Customer’s compliance as it pertains to this Agreement or a Statement of Work. If DIR procures Services for its own use under the DIR Contract, it shall be responsible for its own negotiation of and compliance with this Agreement and any applicable Statements of Work.

ARTICLE 2 SERVICES

2.1 Scope of Services

Dell shall use commercially reasonable efforts to perform the Services described in the Statement of Work in accordance with the terms and conditions of this Agreement.

2.2 Transition Plan

Dell will prepare a transition plan that will provide for the orderly transition of the performance of the Services from Customer or its current service provider to Dell (“**Transition Plan**”) over a period of ninety (90) days from the Effective Date or the period specified in the Statement of Work (“**Transition Period**”). Customer shall have its Representatives, including any current service provider, cooperate with Dell and assist Dell in the preparation and

implementation of the Transition Plan. The Transition Plan will be subject to review and approval of Customer, which will not be unreasonably withheld.

2.3 Adjustment

If the assumptions used to develop the Statement of Work are found to be incorrect, the Parties agree to meet and negotiate, in good faith, equitable changes to the Statement of Work and/or Fee Schedule, as appropriate.

ARTICLE 3 CUSTOMER RESPONSIBILITIES

3.1 Access and Cooperation

Customer shall perform all of the tasks and obligations of Customer set out in the Statements of Work. Customer shall provide reasonable assistance, cooperation, timely decisions and support in connection with the provision of the Services by Dell. Customer shall provide Dell with access to and use of information, data, and internal resources as reasonably necessary to deliver the Services. Customer represents that all information and data supplied to Dell under this Agreement is current, complete and accurate.

3.2 Customer Assets

Customer shall provide timely access to and use of the Customer Assets during the applicable service hours designated in the Statements of Work, to enable Dell to perform the Services. Customer shall provide secure access to adequate work space, supplies, facilities, telephones, power, and lighting, at no charge. The work space must be within reasonable proximity to where Services are to be performed. Dell may not use Customer Assets for any purpose other than the provision of Services under this Agreement without the prior written consent of Customer. Customer will ensure that, in the course of accessing or using Customer Assets, Dell shall not be exposed to any materials or conditions which are classified or identified as hazardous, toxic, or unsafe under applicable law.

3.3 Required Consents

Customer shall be responsible for obtaining all consents, approvals, and licenses required by Customer's suppliers, licensors, lessors, government regulators and other third parties which are necessary to support or permit the provision of Services under this Agreement, at no cost to Dell ("**Required Consents**"). In the event that one or more Required Consents cannot be obtained by Customer, the Parties shall cooperate with each other and take reasonable steps to resolve the matter, provided however that Dell shall not be liable for failure to provide Services or to achieve Service Levels under this Agreement to the extent such failure is caused by result of Customer's failure or inability to obtain any such Required Consents. Dell shall execute such non-disclosure agreements as the applicable suppliers, owners, licensors or lessors may reasonably request as a condition of providing Required Consents.

3.4 Replenishment and Refreshment of Customer Assets

Customer shall carryout upgrades of Customer Assets during the term of this Agreement on a reasonable schedule.

3.5 Non-performance by Customer

Dell shall not be responsible for a failure to provide Services or to achieve Service Levels to the extent caused by: (1) any omissions, oversights, errors, failures by Customer to perform its responsibilities under this Agreement; (2) problems caused by Customer Software or data; (3) a defect or deficiency with respect to Customer Assets; (4) hardware failures for hardware not maintained by Dell; or (5) modifications to hardware by a party other Dell or its representatives. Dell shall notify customer and await Customer agreement to have Dell perform notwithstanding the occurrence of one or more of the foregoing events, with Customer reimbursing Dell for its additional out of pocket expenses for such efforts.

ARTICLE 4

RELATIONSHIP MANAGEMENT AND GOVERNANCE

4.1 Relationship Management

The Parties shall each appoint a representative with appropriate authority to serve as the primary point of contact between the Parties (“**Program Executive**”). Dell will be entitled to rely on the routine instructions, authorizations, approvals or other information provided by Customer’s Program Executive or by any other Customer personnel identified by Customer’s Program Executive as having authority to provide the same on behalf of Customer. The Program Executives shall meet as often as either Party may reasonably request. Each Party shall use reasonable efforts to maintain the continuity of its Program Executive.

4.2 Internal Dispute Resolution and Escalation Process

In the event there is a dispute that cannot be resolved by the Parties, either Party may request in writing that their Program Executives meet within fifteen (15) days to resolve the dispute. If the dispute has not been resolved to the mutual satisfaction of both Parties within fifteen (15) days of the meeting, then the dispute shall be referred to a senior executive at each Party who will meet to resolve the dispute. If the dispute has not been resolved by the representatives within fifteen (15) days of the referral or if the Parties fail to meet, the more formal dispute resolution process outlined in the DIR Contract Appendix A Section 8 shall begin.

ARTICLE 5 CHARGES

5.1 Charges

Customer shall pay Dell the charges specified in the applicable Fee Schedule and in the applicable Statement of Work (the “**Charges**”). Customer will reimburse Dell for all reasonable out-of-pocket expenses incurred by Dell, with the prior approval of Customer, in the performance of the Services. Section 4, Pricing, of the DIR Contract is incorporated herein by reference.

5.2 Invoices

Unless specified otherwise in the Statement of Work, Dell will invoice Customer monthly in advance for all amounts payable hereunder. All invoices shall be due and payable according to the DIR Contract Appendix A Section 5, Purchase Orders, Invoices and Payments.

ARTICLE 6 HARDWARE AND SOFTWARE

6.1 Software

To the extent Dell is required or needs to use any software owned or licensed by Customer to perform the Services (“**Customer Software**”), Customer grants Dell a non-exclusive, worldwide, royalty free license to use Customer Software during the term of this Agreement solely for the purpose of providing the Services. In the event that Customer Software includes any third party software, Customer shall ensure that Dell has the right to use, access and execute such software as necessary to perform the Services. To the extent any Dell Assets include software, Dell shall ensure that Customer has the right to use, access and execute such software as necessary during the term of this Agreement.

6.2 Hardware

Dell will perform Services using Customer Hardware and/or Dell Assets as specified in the Statement of Work. Title to Customer Hardware will be retained by Customer and title to Dell Assets will be retained by Dell. Dell may

upgrade, replace or move Dell Assets as it deems appropriate so long as Dell does not seek to change or revise the Service Levels.

6.3 Addition of Equipment

In the event that additional equipment needs to be added to the original equipment base, Customer and Dell shall agree to the time period equipment is to be obtained for, and costs for provisions of the equipment and any additional services. The Statement of Work shall be amended to list the additional equipment or services and reflect the new amounts incurred by the equipment or service addition, or a new Statement of Work shall be executed.

6.4 Loss/Damage of Equipment

Customer shall be responsible for Dell Assets provided under the Statement of Work while in Customer's possession, and shall promptly pay Dell for any and all Losses other than those due to the negligence of Dell, or due to normal wear and tear. Customer shall be responsible for Dell Asset location reconciliation annually. In the event of theft, loss or damage beyond repair of Dell Assets while in possession of Customer, Customer shall promptly pay Dell the fair market residual value determined by taking into consideration historical market pricing and forecasted future pricing) of the Dell Assets as of the time just prior to the theft, loss or damage. Dell shall provide, as a replacement, Dell Assets of comparable or greater performance and configuration at a cost as mutually agreed. Customer shall continue to pay the Charges at the same level and duration as for the original Dell Assets unless otherwise mutually agreed.

ARTICLE 7

INSURANCE

7.1 Insurance

Dell shall maintain the minimum insurance coverage set forth below during the term of this Agreement:

- (a) Statutory workers compensation insurance in the state(s) or jurisdiction in which Dell's employees perform Services for the customer and employer's liability insurance with limits of not less than \$500,000: (i) for each accident; and (ii) for each employee for occupational disease; or (iii) policy limit for disease.
- (b) Commercial General Liability insurance with limits for bodily injury and property damage liability of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and products/completed operations coverage which shall include premises/operations liability, independent contractors liability, and broad form contractual liability coverage.
- (c) Business automobile liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage liability written to cover all owned, hired and non-owned automobiles arising out of the use thereof by or on behalf of the Dell and its employees.

All such insurance will be issued by insurance companies rated "A-" or better by AM Best. Dell shall furnish insurance certificates to Customer evidencing the above coverage as reasonably requested by Customer in writing. Any and all deductibles and premiums associated with the above insurance policies shall be the sole responsibility of Dell. Customer should be listed as additional insured for coverages (b) and (c) above.

ARTICLE 8 CONFIDENTIALITY

8.1 Confidentiality

To the extent consistent with the Texas Public Information Act, the Parties understand and agree that confidential information is any and all current and future product and/or Services information, reports, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures and other business information, including software reports, strategies, plans, documents, drawings, machines, tools, models, patent disclosures, samples, materials and requests for proposals that may be disclosed between the Parties, whether written, oral, electronic or otherwise, however and wherever acquired ("Confidential Information"). Confidential Information excludes any information which would otherwise fall in the definitions above, but which was (a) known to the recipient of the information ("Recipient") before receipt from the disclosing Party; (b) publicly available through no fault of Recipient; (c) rightly received by Recipient from a third party without a duty of confidentiality; (d) disclosed by disclosing Party to a third party without a duty of confidentiality on the third party; (e) independently developed by Recipient without breach of this or any other confidentiality agreement; (f) disclosed by Recipient after prior written approval from the disclosing Party; or (g) disclosed in accordance with the Texas Public Information Act.

Recipient agrees to protect the disclosing Party's Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Recipient uses with respect to its own Confidential Information. Neither Party has any obligation to exchange Confidential Information.

If Customer believes any Confidential Information is required to be disclosed pursuant to the Texas Public Information Act, prior to release of such Confidential Information Customer shall notify Dell and allow Dell a reasonable opportunity to provide written comments regarding whether Dell believes any of the Confidential Information is subject to an exception under the Texas Public Information Act.

ARTICLE 9 SERVICE LEVELS

9.1 Failure to Achieve Service Levels

Dell will perform the Services in accordance with the Service Levels listed on the applicable Statement of Work. If Dell fails to achieve any Service Levels due to its fault, it shall promptly investigate the cause of such failure and take commercially reasonable steps to prevent such failure from recurring.

9.2 Service Level Reporting

Dell shall deliver to Customer the Service Level reports described in the Statements of Work in respect of the achievement of Service Levels on the frequency specified in the applicable Statement of Work.

9.3 Establishment of Service Levels

During the Transition Period, Dell will analyze the level of performance of Customer's information technology operations, information provided by Customer, and validate any assumptions contained in the Statement of Work. The Service Levels contained in the Statement of Work will become effective at the end of the Transition Period as long as the foregoing analysis does not reveal a material discrepancy with respect to level of performance of Customer's information technology operations, information provided by Customer, or assumptions contained in the Statement of Work. If a material discrepancy is found Dell will provide its recommendations to Customer and the Parties will negotiate revised Service Levels. The revised Services Levels will become part of the Statement of Work when approved in writing by both Parties.

9.4 Service Level Planning

Dell and Customer shall meet at least once every year to: (i) formally review the adequacy, appropriateness, and achievement of Service Levels; and (ii) mutually agree on any adjustments to Service Levels. All changes to Service Levels shall be managed as part of the Change Management Procedure.

ARTICLE 10 TERM AND TERMINATION

10.1 Term

The term of this Agreement shall be the same as in Section 2 of the DIR Contract. The term of each Statement of Work shall be stated therein. All applicable Statements of Work that are entered into between Dell and a Customer under the terms of the DIR Master Agreement DIR-SDD-539 when it remains in effect, shall survive the expiration or termination of DIR-SDD-539.

10.2 Termination

Termination of this Agreement, or all or part of the particular Statement of Work, shall be governed by Section 8.B., Termination, of Appendix A of the DIR Contract. The Parties will agree to a mutually agreeable termination fee schedule for each Statement of Work. Except for Termination for Non-Appropriation, in the event of an early termination of a Statement of Work, such early termination fees shall apply. If the Charges for the Services under a Statement of Work are prepaid by Customer, the Parties will agree to a repayment schedule for unexpended fees.

10.3 Return of Products

For the first 30 days after delivery, Customer may exchange any defective products according to Dell's then current published return policy. After the first 30 days have elapsed, defective products shall be repaired in accordance with the terms of this Agreement.

10.4 Transition

In the event of the termination or expiration of this Agreement or any Statement of Work, the Parties shall work together in a cooperative manner to carry out an orderly termination and transition of Services from Dell to Customer or to a third party service provider in accordance with this Section.

- (a) Dell will, upon Customer's request, use reasonable efforts to perform the Transition Services during a one hundred eighty (180) day period after notice of termination ("**Wind Down Period**"). Dell shall continue to provide the Services during the Wind Down Period and the Charges under this Agreement shall continue to apply during this time period. Where reasonable, Dell shall carry out such Transition Services by reallocating the resources which were previously allocated to providing Services to Customer, provided that Customer shall pay Dell's standard rates and associated expenses for any additional resources needed to provide Transition Service or for additional services requested by Customer.
- (b) Customer's right to purchase any Dell Assets exclusively used to provide Services under this Agreement shall be specified in the applicable Statement of Work.
- (c) Dell's performance of Transition Services is subject to: (i) Customer's prior payment of all amounts owed to Dell as of the start of such Services; and (ii) Customer's return of any Dell owned hardware, software or other property in Customer's possession, except that which is being purchased pursuant to Section 10.4(b) .

ARTICLE 11 REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Dell Representations and Warranties.

Dell represents and warrants that: (i) it has full power and authority to execute and deliver this Agreement; (ii) it is authorized to perform its obligations hereunder; and (iii) the Services will be performed in a professional and workmanlike manner, using trained personnel in accordance with standard industry practices.

11.2 Customer Representations and Warranties

Customer represents and warrants that: (i) it has full power and authority to execute and deliver this Agreement; and (ii) it is authorized to perform its obligations hereunder.

11.3 Disclaimer

EXCEPT AS SPECIFICALLY STATED IN THIS ARTICLE 11, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING ANY MATTER IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR RESULTS TO BE DERIVED FROM THE USE OF ANY SERVICE, HARDWARE, SOFTWARE, SYSTEM OR OTHER ITEMS PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THAT ANY SERVICE, HARDWARE, SOFTWARE, SYSTEM OR ITEMS WILL BE FREE FROM DEFECTS, OR WILL BE UNINTERRUPTED OR ERROR FREE.

ARTICLE 12 GENERAL

12.1 Interpretation

In this Agreement:

- (a) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The words “hereof”, “hereunder”, “hereto” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion of this Agreement. References to specific Articles, Sections or Paragraphs, unless otherwise specified, are intended to be references to Articles, Sections and Paragraphs of this Agreement.
- (b) **No Strict Construction** - The Parties acknowledge and agree that they have mutually negotiated the terms and conditions of this Agreement and that any provision contained herein with respect to which an issue of interpretation or construction arises will not be construed to the detriment of the drafter on the basis that such Party was the drafter, but will be construed according to the intent of the Parties as evidenced by the entire Agreement.

12.2 Consents

Where either Party has a right of consent or approval in respect of any matter in connection with this Agreement, it shall not unreasonably withhold such consent or approval and shall respond to the other Party’s request for such consent or approval in a timely manner. Where this Agreement provides that the Parties are to mutually agree upon certain procedures, standards or details, they shall at all times act reasonably, cooperatively, and in good faith.

12.3 Residual Knowledge

Nothing herein shall prevent either Party or its Affiliates from using the techniques, ideas, and other know-how gained during the performance of this Agreement in the furtherance of its business, to the extent that this does not

result in disclosure of Confidential Information or unauthorized use of any Intellectual Property Right of the other Party. Customer acknowledges that information, software, and documentation created by Dell in the course of delivering the Services which relate to Dell's internal processes and procedures may be used by Dell and its Affiliates to facilitate delivery of services to other customers.

12.4 Business Continuity

Dell has no responsibility for business continuity planning or for disaster recovery of Customer's computing environment, except as may otherwise be expressly agreed to by Dell either in a Statement of Work, or as may be otherwise expressly provided in some other written agreement as may be entered into by the Parties.

12.5 Export Control

Customer warrants that any Customer Software provided by Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such Customer Software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the United States government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. Dell may also require export certifications from Customer for Customer Software. Dell's acceptance of any order for Services is contingent upon the issuance of any applicable export license required by the United States Government. Dell is not liable for delays or failure resulting from Customer's failure to obtain such license or to provide such certification.

12.6 Waiver

Neither Party's failure to exercise any of its rights under this Agreement shall constitute or be deemed to constitute a waiver or forfeiture of such rights.

12.7 Further Assurances

The Parties agree to cooperate with and assist each other and take such action as may be reasonably necessary to implement and carry into effect this Agreement to its full intent.

11.8 Survival. The following Articles of this Agreement shall survive any termination or expiration of this Agreement and shall continue to bind the Parties and their permitted successors and assigns: 3.5, 4.2, 5, 6.4, 8, 10.2, 10.4, 11.3 and 12.

IN WITNESS HEREOF, the Parties to this Agreement have caused it to be executed by their duly authorized officers as of the Effective Date.

DELL MARKETING, L.P.

CUSTOMER

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 1 GLOSSARY

Wherever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them below:

“Affiliate” means, with respect to any person, any person controlling, controlled by or under common Control with such other person.

“Agreement” means this Agreement entitled “Dell Managed Services Agreement” and all Schedules and Statements of Work annexed hereto or in amendment or confirmation hereof.

“Change” means any material addition, upgrade, update, reduction, deletion, modification, improvement, amendment or adjustment to the Services which has a material adverse impact on a Party including, in the case of Dell, a change in the scope of Services.

“Change Proposal” is defined in Article 1(c) of Schedule 4.

“Change Request” is defined in Article 1 (a) of Schedule 4.

“Change Request Procedure” is the process defined in Schedule 4.

“Charges” is defined in Article 5.1 of the Agreement.

“Control” and its derivatives mean, with regard to any entity, the legal or beneficial ownership, directly or indirectly, of fifty percent (50%) or more of the shares (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.

“Customer Assets” means the Customer Facilities, Customer Hardware, and Customer Software.

“Customer Facilities” means the equipment, furniture, office space, office services, secure storage space, staging areas, facilities or other assets owned, licensed or leased by Customer or its Affiliates to be made available for use by Dell.

“Customer Hardware” means any existing Customer owned hardware and any future hardware purchased by Customer outside the DIR Contract.

“Customer Software” means any existing Customer owned software and any future software purchased by Customer outside the DIR Contract.

“Dell Assets” means any PC products (desktops/workstations, notebooks/portables, servers, storage area networks, networking, software, peripherals and associated components/accessories) provided by Dell for use by Customer under this Agreement as an integral component of the Services provided by Dell. All products to be provided under the Services shall be specified within the Statement of Work.

“Effective Date” means Effective Date indicated on the first page of this Agreement.

“Intellectual Property Rights” means all copyright, trade-mark, patent, industrial design or trade secret and all other intellectual property rights.

“Losses” means all losses, liabilities, fines, damages and claims (including third party claims) and all related costs and expenses (including any and all reasonable attorneys’ and other professionals’ fees and reasonable costs of investigation, litigation, settlement, judgment, interest and penalties).

“Program Executive” is defined in Article 4.1 of the Agreement.

“Parties” means Customer and Dell, and **“Party”** means any one of them.

“Representatives” means with respect to either Party, each of its shareholders, directors, officers, employees, agents, professional advisors (including attorneys, accountants, consultants and financial advisers), its Affiliates, and the shareholders, directors, officers, employees, agents, representatives and professional advisors (including attorneys, accountants, consultants and financial advisers) of each of its Affiliates.

“Required Consents” is defined in Article 3.3 of the Agreement.

“Schedules” are defined in Article 1.2 of the Agreement.

“Service Levels” means the performance measures that provide a representative measure of the quality of the Services being delivered under the Agreement.

“Services” means all of the services and tasks to be performed or provided by Dell pursuant to this Agreement.

“Transition Plan” is defined in Article 2.2 of the Agreement.

“Transition Period” is defined in Article 2.2 of the Agreement.

“Transition Services” are defined as Dell’s provision of the following: (1) return of all Customer data; (2) return or destroy all appropriately identified confidential information, (3) provide a list of all events being monitored and their status; (4) provide access to Dell managed facilities to remove Customer owned hardware; and (5) facilitate the relocation of Customer Software to a new Customer or vendor location.

“Wind Down Period” is defined in Article 10.4 of the Agreement.

SCHEDULE 2

STATEMENT OF WORK

This Statement of Work shall state, at a minimum, product list (including ownership of each product), the term and renewal options, invoicing, service level requirements, Customer and Dell responsibilities and scope and nature of the Services to be performed.

SCHEDULE 3

FEE SCHEDULE/EARLY TERMINATION FEES

All prices quoted by Dell to Customers shall include the DIR Administrative Fee, as specified within the DIR Contract.

The Charges shall be as follows:

Early Termination Fees shall be as follows:

Full termination of a Statement of Work

Partial termination of a Statement of Work

SCHEDULE 4
CHANGE MANAGEMENT

1. Change Requests By Customer

- (a) Customer may request a Change, including a new or out of scope service, at any time by completing and delivering to Dell a change request in the form agreed by the Parties (a “**Change Request**”).
- (b) Each Change Request will be submitted to Dell’s Program Executive and will contain all information reasonably necessary for Dell to evaluate the Change Request. Customer will make such further information available to Dell as Dell may reasonably request to enable proper evaluation of the Change Request.
- (c) Dell will respond to a Change Request in a timely manner by delivering to Customer a change proposal (a “**Change Proposal**”). Each Change Proposal will include the information reasonably necessary for Customer to evaluate the Change Proposal, including the proposed Charges associated therewith and changes to Service Levels.
- (d) Within fifteen (15) days from receipt of the Change Proposal or as indicated in the Change Proposal from Dell (or such other longer period as the Parties may agree), Customer will:
 - (i) seek further clarification as it deems necessary;
 - (ii) approve the Change Proposal by signing and returning the Change Proposal to Dell;
 - (iii) propose modifications and/or suggest improvements to any aspect of the Change Proposal by notifying Dell in writing; or
 - (iv) reject the Change Proposal by notifying Dell in writing.
- (e) If Customer proposes modifications or improvements to the Change Proposal, unless the Parties agree otherwise, Dell will submit a revised Change Proposal. If Customer rejects the Change Proposal or does not respond by the validity date indicated on the Change Request, then the Parties will treat the Change Proposal, and the Change Request that precipitated it, as withdrawn.

2. Change Proposals by Dell

- (a) Where Dell desires to implement a Change, it shall prepare a Change Proposal which will include the information necessary for Customer to evaluate the Change Proposal. Each such Change Proposal will be submitted to Customer Program Executive. Dell will make such further information available to Customer as Customer may reasonably request to enable proper evaluation of the Change Proposal.
- (b) Nothing therein shall be deemed to require Customer to accept a Change Proposal initiated by Dell provided that Customer shall Dell shall give due consideration to all such Change Proposals and shall not unreasonably reject any such Change Proposal.
- (c) Customer acknowledges and agree that Dell shall be entitled to receive additional Charges according to its then current standard rates for its additional work and effort in performing services which are outside the scope of the Services including services required as a result of the assumptions in the Statements of Work ceasing to be valid or Customer failing to perform its obligations under the Agreement. Where reasonable to do so Dell shall notify Customer before incurring such additional Charges.

SCHEDULE 5

The State of Texas Department of Information Resources Agreement DIR-SDD-539 incorporated herein by reference.